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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

Dept.: C35  
Date: 8/30/18  
Time: 1:30 p.m.

**AUG 29 2018**

DAVID H. YAMASAKI, Clerk of the Court  
BY: R. PEACE, DEPUTY

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

10 PEOPLE OF THE STATE OF CALIFORNIA,

11 *Plaintiff,*

12 vs.

13 JOHN DOES 1-58,

14 *Defendant.*

Case No.: M-17638

15 } OBJECTION TO APPOINTMENT  
16 } OF THE OFFICE OF  
17 } INDEPENDENT REVIEW TO  
18 } "ASSIST" THE SPECIAL MASTER;  
19 } OBJECTION TO ANY MEETING  
20 } BETWEEN THE OIR AND  
21 } SPECIAL MASTER; OBJECTION  
22 } TO THE PRESENCE OF COUNTY  
23 } COUNSEL OR DEPUTY COUNTY  
24 } COUNSEL REPRESENTING THE  
25 } BOARD OF SUPERVISORS GIVEN  
26 } THE BOS'S LACK OF STANDING  
27 } AND COUNTY COUNSEL'S  
28 } INHERENT CONFLICT OF  
INTEREST REPRESENTING OCSD

19 **MOTION**

20 NOTICE IS HEREBY GIVEN THAT on August 30, 2018, at 1:30 p.m., that the  
21 Orange County Public Defender's Office objects to this court permitting any other individual,  
22 including but not limited to a representative of the Office of Independent Review ("OIR"), to  
23 participate in the court-ordered review of recorded inmate phone calls or to provide  
24 "assistance" to the Special Master in this matter. The Orange County Public Defender's Office  
25 further objects to any meeting between this Court, the Special Master, and an OIR  
26 representative. Furthermore, the Orange County Public Defender's Office objects to the  
27 presence of County Counsel, Leon Page, or any deputy county counsel, appearing as  
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1 representative of the Board of Supervisors given the Board's lack of standing and County  
2 Counsel's inherent conflict of interest in representing the Orange County Sheriff's  
3 Department.

4 Said motion is based upon California Evidence Code § 954, California Penal Code §  
5 636(a), the attached Points and Authorities, argument of counsel, and any evidence introduced  
6 at the hearing.

7  
8 **POINTS AUTHORITIES AND ARGUMENTS**

9 **I. NO OTHER INDIVIDUAL OR AGENCY, INCLUDING THE OIR,**  
10 **SHOULD BE PERMITTED TO PARTICIPATE OR "ASSIST" IN THE**  
11 **REVIEW BEING CONDUCTED BY THE COURT-APPOINTED**  
12 **SPECIAL MASTER**

13 "The client, whether or not a party, has a privilege to refuse to disclose, and to prevent  
14 another from disclosing, a confidential communication between client and lawyer." (Evid.  
15 Code, § 954.) "The attorney-client privilege is a hallmark of our jurisprudence that furthers  
16 the public policy of ensuring 'the right of every person to freely and fully confer and confide  
17 in one having knowledge of the law, and skilled in its practice, in order that the former may  
18 have adequate advice and a proper defense.'" (*DP Pham, LLC v. Cheadle* (2016) 246  
19 Cal.App.4th 653, 675, citing *Clark v. Superior Court* (2011) 196 Cal.App.4th 37, 48.) In fact,  
20 "[t]he right to effective assistance of counsel includes the right to confer in absolute privacy."  
21 (*County of Nevada v. Superior Court* (2015) 236 Cal.App.4th 1001, 1007.) "When others can  
22 overhear attorney-client communications, there is an impermissible chilling effect on the  
23 constitutional right to counsel." (*Id.*)

24 Here, despite the perhaps well-meaning intentions of the Board of Supervisors  
25 ("BOS"), no other individual should be permitted to intervene or "assist" the Special Master  
26 in his duties. Indeed, the entire purpose of appointing the Special Master is to ensure the  
27 confidentiality of the inmate recorded phone calls. Allowing another person, or agency, to  
28 participate in this process is tantamount to violating the attorney client privilege and defeats

1 the purpose of the Special Master. Moreover, given that the parties vehemently oppose anyone  
2 other than the Special Master accessing these calls, an OIR would be in violation of the law  
3 for eavesdropping or listening to any of these jail inmate phone calls. (Pen. Code, § 636(a)  
4 [“Every person who, without permission from all parties to the conversation, eavesdrops on  
5 or records, by means of an electronic device, a conversation, or any portion thereof, between  
6 a person who is in the physical custody of a law enforcement officer or other public officer, or  
7 who is on the property of a law enforcement agency or other public agency, and that person’s  
8 attorney... is guilty of a felony...”].)

9 Finally, permitting a member of the OIR, ostensibly acting on behalf of the BOS, to  
10 participate or “assist” in a Special Master’s investigation or inquiry violates separation of  
11 powers. As the BOS represents the executive branch of Orange County government, it is  
12 improper for the OIR or BOS to participate in proceedings involving a Special Master who  
13 serves in the capacity of a subordinate judicial officer. (See, generally, *People v. Superior*  
14 *Court (Laff)* (2001) 25 Cal.4th 703 [Special Masters and referees are responsible for  
15 performing subordinate judicial duties.])

## 16 **II. THIS COURT SHOULD NOT HAVE A MEETING WITH A** 17 **REPRESENTATIVE OF THE OIR AND THE SPECIAL MASTER**

18 As discussed above, no other individual beyond the Special Master should be involved  
19 in this proceeding. It is axiomatic then that no meeting should occur between an OIR  
20 representative, which is a non-party in this case, and the Court/Special Master. There is simply  
21 no authority for permitting a representative from OIR to involve himself in these proceedings.

## 22 **III. BECAUSE COUNTY COUNSEL REPRESENTS THE OCSD AND HAS** 23 **NO STANDING TO APPEAR ON BEHALF OF THE BOARD OF** 24 **SUPERVISORS, NEITHER LEON PAGE NOR HIS DEPUTIES** 25 **SHOULD APPEAR ON THIS CASE, HAVE INPUT, OR PARTICIPATE** 26 **IN ANY KIND OF REVIEW OR ADVOCACY FOR THE BOARD OF** 27 **SUPERVISORS**

28 The OIR lacks standing to participate in this hearing. Moreover, County Counsel lacks  
standing to advocate for the OIR or the Board of Supervisors in this hearing. Finally, County

1 Counsel has an actual conflict of interest and should not be permitted to advocate because the  
2 interests of the OIR would be adverse to its other client, the Orange County Sheriff's  
3 Department.

4 The BOS, represented by County Counsel Leon Page, has no standing to appear on this  
5 case. It does not represent any individual on the recorded calls or accessed calls list. County  
6 Counsel cannot simply appear to express that it wishes to share the opinions or suggestions of  
7 a county agency, however well-intentioned.

8 Even if the Court somehow finds that County Counsel has standing to advocate on this  
9 case, County Counsel Leon Page and his deputies have a conflict of interest in their  
10 representation of both the BOS and the OCSD. Evidently, Page's interest in representing the  
11 BOS is to advocate for the appointment of the OIR to "assist" the Special Master in this case.  
12 However, County Counsel currently also represents OCSD, an agency that is facing significant  
13 civil and criminal liability for its failure to prevent the recording and eavesdropping of  
14 attorney-client privileged phone calls. Certainly, the purported goal of the OIR to "investigate"  
15 the circumstances of this failure directly conflicts with OCSD's goal of not being held liable  
16 for its failures in this area. When an attorney is engaging in dual or simultaneous representation  
17 for more than one client, "[t]he primary value at stake ... is the attorney's duty – and the  
18 client's legitimate expectation – of loyalty..." (*Flatt v. Superior Court* (1994) 9 Cal.4th 275,  
19 284, emphasis in original.) Indeed, it is an ethical violation to "assum[e] any relation which  
20 would prevent [an attorney] from devoting his entire energies to his client's interests." (*Klemm*  
21 *v. Superior Court* (1977) 75 Cal.App.3d 893, 901.) Furthermore, "an attorney's duty of loyalty  
22 to a client is not one that is capable of being divided..." (*Flatt, supra*, 9 Cal.4th at 282.)

### 23 CONCLUSION

24 This Court should not permit any individual, even those who purport to report to the  
25 BOS, to assist or otherwise involve himself in the review or assessment of these privileged  
26  
27  
28


1 phone calls.<sup>1</sup> Indeed, this “invasion of privacy... is a serious threat to the free exercise of  
2 personal liberties and cannot be tolerated in a free and civilized society.” (*Romero v. Securus*  
3 *Technologies, Inc.* (S.D. Cal. 2016) 216 F.Supp.3d 1078, 1088.)

4 To protect the already eroded sanctity of the attorney-client privileged phone calls, this  
5 Court cannot permit the OIR to involve itself in the tasks assigned to the Special Master. Doing  
6 so would simply defeat the purpose of the role of the Special Master to ensure this information  
7 is kept confidential. To that end, this Court should not meet with any OIR representative with  
8 the Special Master (or otherwise). Finally, County Counsel should not be permitted to  
9 advocate for the OIR because it lacks standing and suffers from a conflict of interest given its  
10 advocacy on behalf of the OCSD.

11 Should the Court be inclined to rule against any of these objections, defense requests  
12 appropriate time to seek appellate review.

13 DATED: August 29, 2018

14 Respectfully submitted,  
15 SHARON L. PETROSINO  
16 Public Defender  
17 Orange County

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19 SARA ROSS  
20 Assistant Public Defender  
21 Supervising Attorney  
22 Writs & Appeals Unit  
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26 <sup>1</sup> It should be noted that the Board of Supervisors consists of at least one individual who  
27 actively seeks to become the District Attorney of Orange County. The conflict inherent in  
28 dispatching an OIR representative to “assist” in assessing criminal defendants’ phone calls to  
their lawyers, and reporting back to the BOS, is apparent on its face.